

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 210 of 2003

National Insurance Company Limited through its
Divisional Manager, Divisional Office Nainital Road,
Haldwani, District Nainital.

...**Appellant**

Versus

1. Sri Sher Singh S/O Sri Devi Singh,
Resident of Vyasi Nehari Haripur , Kalsi, Tehsil
Vikasnagar, Dehradun.
2. Sri Irshad Son of Sri Shabudin.
Resident of village Shyam Nagar, P.S. Lisadi Gate
Meerut.
3. Sri Shahid S/O Sri Abdul Rashid, Resident of
Mandir Wali Gali, Rashid Nagar, P.S. Lisadi Gate
Meerut.
4. Smt. Hadisa W/O Sri Aslam, R/O village Nanu,
Police Station Meerut.
5. The New India Insurance Co. Ltd. Astley Hall,
Dehradun.

... **Respondents**

Sri D.S.Patni, Adv. learned counsel for the appellant.

Date April 20, 2006.

P.C : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (*for short the Act*) is directed against the judgment and award dated 16-5-2003, passed by the Motor Accident Claims Tribunal/ Additional District Judge III FTC Dehradun (*in short the Tribunal*) in Motor Accident Claim Petition No. 220 of 2001, Sher Singh Vs. Sri Irshad and others, whereby compensation of Rs. 23,500/- has been awarded in favour of the claimant against the O.Ps. along with interest @ 9% per annum from the date of claim petition till the date of payment. Initial liability to pay compensation was fastened against the Insurance Company-appellant as mentioned in the impugned order with liberty to the insurer to recover the same from O.P.Nos. 2 and 3.

Relevant facts are that claimant Sher Singh preferred a claim petition before the Tribunal on account of injuries suffered by

him in a motor vehicle accident which occurred on 20.6.2001 due to rash and negligent driving of Truck No. NLH-8299. According to the claimant he spent Rs. 60,000/- in his treatment. Claim has been made for compensation of Rs. 6,00,000/-. The O.P. Nos. 1 to 3 filed their joint written statement admitting the accident. It was asserted that the truck was not being driven rashly and negligently but at a slow speed, rather the accident occurred due to negligence on the part of Vikram driver on which the claimant was going. The O.P.No.4 contested the claim petition by filing its written statement. It was asserted that the accident was result of contributory negligence on the part of the driver of the Vikram as well as the truck driver. According to it, the driver of the Vikram was rash in driving not the truck driver. Plea of collusion between the claimant and the owner of the truck was also taken. O.P.No.5 insurer of Vikram has taken the ground in its written statement that the truck driver was at fault.

The Tribunal framed necessary issues in the case and on the basis of the evidence led by the parties decided the Issues framed on the point of rash and negligence and contributory negligence by holding that the accident occurred due to sole negligence on the part of truck driver and there was no negligence on the part of driver of Vikram. On the point of validity of driving licence of the truck driver, the Tribunal has held that the driver of the Truck was having a driving licence to driver light motor vehicles. Ultimately the claim petition was decreed for compensation of Rs. 23,500/- against the O.P.Nos. 2, 3 and 4 as mentioned earlier.

I have heard learned counsel for the appellant-Insurance Company and perused the entire material on record.

In this appeal, the impugned award has been assailed mainly on the ground that the driver of the truck was not having a valid driving licence and the provision of Section 149 was violated,

therefore, the Tribunal was not justified in fastening the liability to pay the compensation upon the insurer-appellant.

In the instant case, the learned Tribunal found that the driver of the Truck was having a driving licence, which was meant for Light Motor Vehicle. The contention of the appellant is that since the truck driver was not having a valid driving licence to drive heavy motor vehicle like the truck in question, the insurer cannot be held liable to pay compensation. The law on the point has been laid down by the Apex Court in the case of **“National Insurance Co. Ltd. Vs. Swaran Singh” [(2004) 3 Supreme Court Cases, 297]**. In para 110(iii), the Apex Court has observed as under:-

“Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time.”

In sub-paragraph (viii) of Paragraph 110 it was observed that ***“if a vehicle at the time of accident was driven by a person having a learner’s licence, the insurance companies would be liable to satisfy the decree.”***

In the impugned order, the learned Tribunal has already given liberty to the appellant to recover the amount of compensation after satisfying the award. I do not find any infirmity in the impugned order passed by the learned Tribunal.

It is pertinent to mention that in A.O. No. 212 of 2003, National Insurance Co. Ltd. Vs. Ashish Gaur and others, arising out of the same motor accident, this Court vide order dated 26.5.2005

has already decided the controversy and found that the appeal preferred by the insurer has no merit.

For the reasons aforesaid, the appeal is liable to be dismissed.

The appeal is dismissed. The impugned judgment and award dated 16.5.2003 is upheld. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

(B.S. Verma, J.)

RCP